

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Procedures Relating To Areas Eligible For	)	DA 12-2075
Funding And Election To Make A Statewide	)	
Commitment In Phase II Of the Connect	)	DA 13-80
America Fund	)	

**COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS**

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## **Table of Contents**

Executive Summary.....	i
<b>I. THE LIST OF ELIGIBLE CENSUS BLOCKS SHOULD BE STABLE AND CONSISTENT WITH THE COMMISSION’S UNIVERSAL BROADBAND GOALS.....</b>	<b>1</b>
A. Eligible Census Blocks Should Be Fixed In Advance, Based On the National Broadband Map and Established Procedures.....	3
B. Census Blocks Should Be Deemed “Unserved” By Default & Challenge Process Should Allow Adequate Time For Response.....	6
C. Eligible Census Blocks Should Be Those Without Access to Broadband At Speeds Of At Least 6 Mbps Downstream, 1.5 Mbps Upstream.....	8
D. A Competitor Should Not Be Deemed “Unsubsidized” When It Receives Federal Subsidies To Build and Operate Broadband.....	10
E. A Separate Process Is Warranted For Identifying Census Blocks Incorrectly Listed As “Served” .....	10
<b>II. PROCEDURES FOR PRICE CAP CARRIER ELECTION OF CAF PHASE II SUPPORT SHOULD GIVE CARRIERS GREATER FLEXIBILITY TO USE SUPPORT EFFICIENTLY.....</b>	<b>12</b>
A. Adequate Time Should Be Provided for CAF II Elections.....	12
B. The Commission Should Allow Carriers To Elect CAF II Support On A Study Area Rather Than Statewide Basis.....	15
C. Local Conditions Should Determine the Percentage of Locations Required To Be Served at 6 Mbps Downstream/1.5 Mbps Upstream.....	17
D. ETC Obligations Should Follow CAF II Election.....	18
<b>III. CONCLUSION.....</b>	<b>20</b>

### **Executive Summary**

The process for determining what census blocks will be eligible for CAF Phase II support should allow adequate time for analysis, but ultimately should allow carriers to rely on a settled list of “unserved” census blocks in advance of having to make an election of support. This means that challenges to census blocks as “unserved” should be settled well before the election date. In cases of doubt, census blocks should remain on the list as “unserved” and therefore eligible for support, because the Commission’s policy is to promote broadband investment, and this process should encourage rather than discourage maximum broadband deployment.

The Bureau should not use 3 Mbps/768 kbps broadband speeds as a “proxy” for adequate broadband speeds. Rather, the Bureau should use 6 Mbps/1.5 Mbps as the minimum speeds that define whether a census block is already “served” for the purpose of defining eligibility. These speeds are the Commission’s own goals for CAF Phase II – anything less should not be allowed to keep a census block off the eligibility list. Similarly, a census block should not be deemed served by an unsubsidized competitor if the competitor has received millions of dollars in federal broadband support from a program outside the FCC’s universal service regime. A separate process should allow any census blocks that come to light as actually unserved to be added to the eligible census block list at any time. The Bureau’s rules should maximize eligibility.

The election process for CAF Phase II should give carriers enough time and flexibility to determine how to maximize the use of the support, to make efficient use of limited resources and to bring broadband to as many locations as possible. Carriers should be able to elect CAF Phase II support at the study area or operating company

level, rather than on a statewide basis.

Finally, carrier obligations to continue providing service on request should follow the high-cost support – where support is terminated, these obligations must be terminated as well.

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**COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS**

Alaska Communications Systems (“ACS”)<sup>1</sup> hereby submits these comments in response to the Public Notice issued by the Wireline Competition Bureau (the “Bureau”) in the above-captioned proceeding, seeking comment on the procedures relating to the election of Connect America Fund (“CAF”) Phase II support by price cap carriers and the challenge process for census blocks identified as eligible for Phase II support.<sup>2</sup> The ACS ILECs are price cap carriers who will be eligible to elect CAF Phase II support in exchange for making a commitment to deploy broadband in areas designated as eligible.

**I. THE LIST OF ELIGIBLE CENSUS BLOCKS SHOULD BE STABLE AND CONSISTENT WITH THE COMMISSION’S UNIVERSAL BROADBAND GOALS**

In order to establish what areas will be eligible for CAF Phase II, the Commission directed the Bureau to publish a list of eligible census blocks, that is, census blocks where the cost per line is above the funding threshold and below the threshold for remote and

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<sup>1</sup> In these comments, ACS signifies the four incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

<sup>2</sup> Public Notice, WC Docket No. 10-90, *Procedures Relating To Areas Eligible For Funding And Election To Make A Statewide Commitment In Phase II Of the Connect America Fund*, DA 12-2075 (Wireline Comp. Bur., rel. Dec. 27, 2012) at para. 3. (“CAF II Public Notice”); *see also* Public Notice, WC Docket No. 10-90, *Comment Cycle Established For Bureau’s Public Notice Regarding Connect America Phase II*, DA 13-80 (Wireline Comp. Bur., rel. Jan. 22, 2013) (announcing comment dates following Federal Register publication of the CAF II Public Notice).

extremely high-cost areas designated for support under the Remote Areas Fund (“RAF”), and which are served (based on the Commission’s performance obligations, including speed, latency, and usage) at affordable rates by an unsubsidized competitor.<sup>3</sup> The Commission delegated to the Bureau to implement specific requirements, such as when a census block would be deemed “unserved by an unsubsidized competitor.”<sup>4</sup>

In the CAF II Public Notice, the Bureau seeks comment on appropriate procedures and timing for the publication of that list, including what census blocks should be deemed “eligible,” and the process for challenging census blocks on the list or missing from the list. ACS respectfully submits that some of the Bureau’s proposals will create confusion rather than clarity around the areas eligible to be served using CAF Phase II support, hindering the ability of service providers to maximize use of the budgeted support amounts. ACS urges the Bureau to adopt rules that will permit price cap carriers a meaningful opportunity to analyze whether they can meet the CAF Phase II broadband build-out and performance obligations in the eligible study areas. Moreover, the rules should be designed to promote universal broadband access, not to hinder its deployment; therefore, they should err in favor of broadening rather than narrowing eligibility for support.

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<sup>3</sup> See *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF-ICC Transformation Order*”), paras. 167, 170. The Commission stated it “will use the model to identify those census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone, and, therefore, should be eligible for CAF support ... [and that it] will also use the model to identify, from among these, a small number of extremely high-cost census blocks that should receive funding specifically set aside for remote and extremely high-cost areas.” *Id.*, para. 167.

<sup>4</sup> *Id.*, para 170.

**A. Eligible Census Blocks Should Be Fixed In Advance, Based On the National Broadband Map and Established Procedures**

In the *USF-ICC Transformation Order*, the Commission instructed the Bureau to publish a list of census blocks eligible for CAF Phase II support following the adoption of a cost model.<sup>5</sup> In the CAF II Public Notice, the Bureau proposes to publish a list of census blocks “classified by the cost model as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for Phase II.”<sup>6</sup> The Bureau proposes to allow 45 days for challenges to the list, and 20 days for rebuttals. ACS opposes the Bureau’s proposals.

As a threshold matter, the cost model is not expected to classify census blocks as “served” or “unserved” under any particular definition. It will help define what census blocks will be eligible for support, in light of the total budget of \$1.8 billion and the relative costs of serving different price cap service areas. But a census block can be deemed “served” only if fixed voice and broadband services, at the minimum performance levels objectively defined by the Commission, are available from an unsupported service provider. This requires detailed and labor-intensive analysis by carriers wishing to serve a census block using CAF Phase II support. As discussed below, the process for challenging a census block’s status as “unserved” (and thus eligible for support) is a critical one. It should allow adequate opportunity for challenges and resolution of challenges, sufficiently ahead of decisions regarding funding, to ensure that no census blocks are excluded from the CAF II program where support is merited.

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<sup>5</sup> *USF-ICC Transformation Order* para.171.

<sup>6</sup> CAF II Public Notice para. 8.

For other universal service programs, including both CAF Phase I incremental support and CAF Phase I frozen support, the Commission has relied on a specified version of the National Broadband Map administered by the National Telecommunications and Information Administration (“NTIA”) to identify eligible census blocks. ACS supports this approach, and further urges the Bureau to choose a version of the National Broadband Map that *predates* its initial publication of the list of eligible census blocks for CAF Phase II.

NTIA has established procedures for collecting and publishing semi-annual updates to the National Broadband Map. Specifically, recipients of grant awards under the State Broadband Data and Development (“SBDD”) Grant Program must compile coverage data and submit cumulative updates to NTIA every six months through 2015.<sup>7</sup> As advocated in ACS’s comments on CAF Phase I eligibility, relying on the National Broadband Map as of a date certain allows all interested parties to rely on the same information, and prevents undue administrative burden that would result from every-shifting lists of eligible census blocks.<sup>8</sup>

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<sup>7</sup> National Telecommunications and Information Administration, State Broadband Data and Development Grant Program, *Notice of Funds Availability and Solicitation of Applications*, 74 Fed. Reg. 32545, 32552 n.26 (“Broadband mapping data should be updated at least on March 1 of each year (by submitting data as of December 31 of the previous year) and at least September 1 of each year (by submitting data as of June 30 of that year) . . . . For the purposes of this program, an update will be deemed to be a verification of existing data and a collection of any additional data reflecting the expansion or contraction of broadband availability since the previous data collection or update”).

<sup>8</sup> *Connect America Fund*, WC Docket No. 10-90, DA 12-1961, DA 12-2001, Comments of Alaska Communications Systems filed Jan. 9, 2013 (“ACS Phase I Mapping Comments”) & Reply Comments of Alaska Communications Systems filed Jan. 24, 2013 (“ACS Phase I Mapping Reply Comments”). As ACS expressed in its Phase I Mapping Comments, the Commission should use the “same version of the National Broadband Map that was controlling when price cap carriers received ...



The Bureau proposes that, except where it modifies a census block status using the challenge process (addressed below), it will set as the “default” for eligible census blocks those classified as unserved using the National Broadband Map “*at the time the challenge is resolved.*”<sup>9</sup> However, this date will be different for different locations. Moreover, it will prevent carriers from conducting the in-depth analysis they require before deciding whether to accept CAF Phase II support.

The Bureau correctly rejects the idea of making eligibility determinations based announced plans for future broadband deployment, wanting to be sure that broadband service actually is available before eliminating support for a census block.<sup>10</sup> By using the National Broadband Map as of a date certain – say, June 2012 – as the default for determining eligibility, the Bureau would create a far more stable environment in which eligible carriers can perform their necessary analyses and make thoughtful business decisions, and the Bureau can be sure that broadband access is truly available before removing an area from eligibility.

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[CAF] Phase I incremental and frozen support ... to assess ongoing compliance with the Commission’s rules governing use of such support,” stressing that to do “otherwise would virtually assure that the price cap carriers’ deployment plans could not be executed as originally conceived, and expose carriers accepting CAF Phase I incremental support to compliance risks based solely on the order and timing of their deployment efforts across the three-year buildout period.” ACS Phase I Mapping Comments at 2 and 4. It is equally true with Phase II compliance that “[f]orcing price cap carriers to shift deployment plans dynamically to alternative locations based on subsequent updates to the National Broadband Map would inevitably place their overall deployment commitments in jeopardy.” *Id.* at 4.

<sup>9</sup> CAF II Public Notice para. 18 (emphasis added).

<sup>10</sup> CAF II Public Notice, para. 20.

**B. Census Blocks Should Be Deemed “Unserved” By Default & Challenge Process Should Allow Adequate Time For Response**

If the starting point for CAF Phase II planning is the National Broadband Map as of a date certain, then all parties may begin planning based on the same baseline assumptions. Because the Commission’s goal is maximum broadband coverage, it should seek to make all census blocks eligible except in clear cases where broadband meeting FCC standards is widely available. In cases of doubt, a census block should be deemed “unserved” and thus remain eligible for support unless the Bureau finds clear and convincing evidence that the entire area has access to broadband meeting the Commission’s minimum criteria. “Some evidence” should not be sufficient to remove a census block from eligibility.<sup>11</sup> When a party seeks to challenge an area shown on the National Broadband Map as unserved, it should provide substantial evidence that service meeting the Commission’s standards is widely available, and the public should be given a reasonable opportunity for rebuttal. The area should be redesignated as “served” and thus ineligible for support only if the weight of substantial evidence supports it; uncertainty should be resolved in favor of eligibility.<sup>12</sup>

ACS agrees with the Bureau that any census block eligibility challenge should present evidence as to available broadband speed, latency, and capacity (or minimum usage allowance).<sup>13</sup> ACS urges the Bureau also to require a showing as to affordability and availability of voice service, which is mandatory under universal service obligations

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<sup>11</sup> CAF II Public Notice, para. 10.

<sup>12</sup> CAF II Public Notice, paras. 11, 16.

<sup>13</sup> CAF II Public Notice, paras. 12-14. ACS also supports the requirement that such allegations should be supported by certifications by individuals with knowledge of the facts. *Id.*, para. 15.

in addition to broadband service.<sup>14</sup> On rebuttal, the same criteria should be evaluated. For example, if a challenger offers evidence that broadband is available at required speeds in a census block, but evidence is provided on rebuttal that no competing voice service is offered – for example, there has been no request for local number portability (“LNP”) – or the voice service is not offered at comparable rates, then the challenge should fail. Again, the burden must be on the challenger to demonstrate adequate voice and broadband capability, and to prevent support – and supported services – from being prematurely withdrawn, to the detriment of the public.

This problem already has presented itself in ACS service areas. In the context of CAF Phase I incremental support, ACS spent substantial resources identifying locations to which it could extend broadband and comply with the requirements of the Commission’s rules. The Bureau subsequently notified ACS that several wireless Internet service providers (“WISPs”) were identified on the National Broadband Map as serving locations in ACS ILEC territories, making those locations ineligible for support despite the lack of evidence that those entities were providing voice and broadband services to any local customers. At that point, ACS had no opportunity to challenge whether those entities “served” the locations in question, but was obliged to seek a waiver of the Commission’s rules. A better process would have been for the WISPs to provide concrete evidence, well in advance of the CAF Phase I election deadline, that they offer voice and broadband services meeting the Commission’s requirements in ACS’s territory.

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<sup>14</sup> See *USF-ICC Transformation Order*, paras. 1, 61, 580.

ACS disagrees with the Bureau that 45 days would be sufficient to review and challenge the list of eligible census blocks; similarly, 20 days is wholly inadequate to review and respond to such challenges.<sup>15</sup> NTIA allows 60 days for the submission of updated mapping data. ACS urges the Bureau to allow no less time for parties to review and challenge the list of eligible (unserved) census blocks, and another 60 days for rebutting any such challenges.

ACS opposes the Bureau's proposal to consider whether parties first brought alleged errors in the National Broadband Map to the attention of the state mapping authority before bringing them to the FCC.<sup>16</sup> Price cap carriers are shouldering many burdens to implement the *USF-ICC Transformation Order*, and for many reasons may not have time to bring a question to the attention of the state mapping entity before the alerting the FCC. Carriers and their customers should not be penalized merely because time and resources are limited. Moreover, conditioning eligibility on this type of technicality could encourage competitive gamesmanship that will not serve the goal of increasing broadband availability.<sup>17</sup>

**C. Eligible Census Blocks Should Be Those Without Access To Broadband At Speeds Of At Least 6 Mbps Downstream, 1.5 Mbps Upstream**

In developing the eligible census block list, the Bureau further proposes to treat a census block as "served" if broadband is available anywhere in the census block from an

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<sup>15</sup> CAF II Public Notice, para. 17.

<sup>16</sup> *Id.*, para. 19.

<sup>17</sup> *Cf.* CAF II Public Notice, para. 20 (not wanting to provide an opportunity for potential competitors to engage in strategic behavior to eliminate support for a particular census block without assurance that the competitor actually provides broadband service there).

unsubsidized provider, at transmission speeds of at least 3 Mbps downstream and 768 kbps upstream – that is, a census block would be deemed “unserved” only if broadband were not available at those speeds, or were available only from a subsidized provider, in any part of the census block.<sup>18</sup> This proposal will relegate many census blocks to sub-standard service.

Broadband speeds of 3 Mbps downstream/768 kbps upstream should not be used as a “proxy” for 4/1 Mbps. ACS urges the Bureau to adopt 6 Mbps/1.5 Mbps as the minimum speeds that define whether a census block is “served” for this purpose. These speeds are the Commission’s own goals for CAF Phase II, so it makes good policy sense to permit support to be used where service at such target speeds has not been available (or only has been available through subsidy). Moreover, as explained in prior ACS filings, the National Broadband Map does not contain a speed tier cutoff at 4 Mbps downstream and 1 Mbps upstream. It does have a cutoff at 6 Mbps/1.5 Mbps.<sup>19</sup> Carriers receiving CAF Phase II ultimately will be required to demonstrate that they make available service

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<sup>18</sup> *Id.*, para. 9 (while the Commission defined an “unsubsidized competitor” as one that offers terrestrial fixed broadband with advertised speeds of at least 4 Mbps downstream and 1 Mbps upstream, the Bureau proposes to use 3 Mbps/768 kbps as a “proxy” for 4 Mbps/1 Mbps “because that information is readily available from other data sources”); *id.*, para. 21 (proposing to exclude partially served census blocks from the list of eligible census blocks).

<sup>19</sup> *See Connect America Fund*, WC Docket No. 10-90, Comments of Alaska Communications Systems (filed Jan. 28, 2013) at 10-14 (“ACS CAF Phase I Reform Comments”). As noted in the ACS CAF Phase I Reform Comments, “the 6 Mbps/1.5 Mbps speed tier has the further benefit of being the lowest speed tier reflected on the National Broadband Map that unequivocally meets the Commission’s 4 Mbps/1 Mbps broadband threshold. It is therefore easy to administer, because it requires no further proxy at all.” *Id.* at 12. ACS continues to believe that “[t]his speed tier is the one that will ultimately govern compliance under CAF Phase II, meaning that this is the speed to which the Commission’s rules should incentivize carriers’ broadband deployment efforts.” *Id.*

at these speeds in some percentage of supported locations.<sup>20</sup> Therefore, areas lacking service at these speeds should be eligible for broadband deployment supported by CAF Phase II funding. The 6 Mbps/1.5 Mbps speed tier would be easy to administer, requiring no proxy, and would further the Commission's goal of encouraging broadband availability in a percentage of supported locations at actual speeds of at least 6 Mbps downstream and 1.5 Mbps upstream.

**D. A Competitor Should Not Be Deemed "Unsubsidized" When It Receives Federal Subsidies To Build and Operate Broadband**

The "unsubsidized competitor" that renders a census block ineligible for support currently is defined only as a provider of terrestrial fixed voice and broadband service that "does not receive high-cost support" as defined in the Commission's rules.<sup>21</sup> It ought to be expanded to reflect the reality that other competitors are heavily subsidized under other federal telecommunications and broadband subsidy programs such as the Broadband Initiatives Program ("BIP"). ACS has documented how one such competitor, GCI/UUI, has received \$88 million through a combination of BIP grants and low-interest loans to provide terrestrial fixed broadband services in areas overlapping ACS ILEC service territory, but refuses to give cost-based access to ACS or other ILECs in the area. ACS should not be precluded from CAF Phase II support in these areas when the only alternative provider is so heavily subsidized. ACS therefore proposes that the definition of "unsubsidized competitor" should be a provider of terrestrial fixed voice and broadband service that does not receive *either* high-cost support *or other* federal subsidies used for broadband availability in high-cost areas.

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<sup>20</sup> 47 C.F.R. §54.313(e)(2).

<sup>21</sup> 47 C.F.R. §54.5.

**E. A Separate Process Is Warranted For Identifying Census Blocks Incorrectly Listed As “Served”**

The path for identifying census blocks incorrectly listed by the National Broadband Map as “served,” and which should be eligible for support, should be governed by a process that is somewhat different from the process for identifying census blocks that should be deemed ineligible, discussed above. Because the rules should favor maximum eligibility and extending broadband to as many unserved locations as possible, parties should be permitted at any time to bring to the Commission’s attention census blocks not previously listed as unserved that should be eligible for support.

Any evidence tending to show that such areas were incorrectly omitted from the list of eligible census blocks should be examined by the Bureau and processed expeditiously, with opportunity for public examination and rebuttal. For example, where the National Broadband Map shows an area to be “served” by a cable broadband provider or WISP, the Bureau always should be willing to examine evidence that such provider fails to offer voice service or broadband meeting the Commission’s speed, latency and capacity requirements, whenever such evidence is discovered. It may be that this occurs after a carrier has begun deploying broadband in a neighboring census block, for example. Similarly, in January 2013, ACS identified 1,991 census blocks that should be listed as unserved but do not appear in the data set of unserved census blocks on the current version of the National Broadband Map.<sup>22</sup> Although these locations were identified after the initial deadline for election of CAF Phase I incremental support, the

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<sup>22</sup> See ACS Phase I Mapping Comments at 6. As with the mapping process for CAF Phase I support, ACS also urges the Commission to allow broadband obligations to be met with Phase II support in any unserved census blocks even if they had not been identified as unserved when a carrier accepted such support. See ACS Phase I Mapping Reply Comments at 6.

Bureau should consider the evidence presented by ACS and amend the list of unserved census blocks. There should be no time bar on bringing additional unserved census blocks to the attention of the Commission and adding them to the eligible list whenever evidence supports it. Again, in cases of doubt, the census block should be deemed eligible for support, encouraging investment in areas that are unserved or underserved.

**II. PROCEDURES FOR PRICE CAP CARRIER ELECTION OF CAF PHASE II SUPPORT SHOULD GIVE CARRIERS GREATER FLEXIBILITY TO USE SUPPORT EFFICIENTLY**

The Bureau also seeks comment on proposals to implement the CAF Phase II mechanism, in particular, obtaining a commitment from carriers accepting CAF Phase II support to use the support in the manner intended under the USF-ICC Transformation Order. The Bureau seeks comment on alternative proposals, as well as ideas for minimizing the impact on small businesses.<sup>23</sup> The Commission's primary goal under the Communications Act must be ensuring support is adequate for universal service. The Commission has predetermined that CAF Phase II will only partly achieve that goal, however, by adopting a ceiling of \$1.8 billion on the total fund. Below ACS provides three suggestions for improvement of this program to increase the incentive for ILECs serving high-cost areas to accept the support, reduce the burden of the program on small ILECs, and increase the likelihood of achieving the Commission's universal broadband goals.

**A. Adequate Time Should Be Provided for CAF II Elections**

The Bureau proposes to allow only 90 days from the date it publishes the final list of eligible census blocks for price cap carriers to decide whether to accept CAF Phase II

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<sup>23</sup> CAF II Public Notice, Section III.B. & para. 27.



support and the attendant build-out and performance obligations.<sup>24</sup> ACS respectfully submits that this is too short a period for price cap carriers to do the work necessary to make an informed election. ACS recommends that carriers be permitted 180 days for a meaningful opportunity to examine their networks, resources, expected demand and other relevant business factors.

Under the Commission's rules, recipients of CAF Phase II support must, within three years, provide broadband service to 85 percent of their supported locations in the eligible census blocks, at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications, and usage capacity that is reasonably comparable to urban offerings.<sup>25</sup> Within five years they must provide broadband service to 100 percent of their supported locations in the eligible census blocks, at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, and a percentage of required locations (not yet announced by the Bureau) at actual speeds of at least 6 Mbps downstream and 1.5 Mbps upstream, with latency suitable for real-time applications, and usage capacity that is reasonably comparable to urban offerings.<sup>26</sup> In addition, beginning next year, carriers accepting CAF Phase II support must report annually on the community anchor institutions to which they began providing broadband service in the preceding year, and certify that they are taking reasonable steps to meet increased speed obligations that will exist for all supported locations at the end of five years.<sup>27</sup>

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<sup>24</sup> CAF II Public Notice para. 23.

<sup>25</sup> 47 C.F.R. §54.313(e)(1).

<sup>26</sup> 47 C.F.R. §54.313(e)(2).

<sup>27</sup> 47 C.F.R. §54.313(e)(3).

As ACS informed the Commission some months ago, the company anticipates that compliance with these and CAF Phase I obligations will require a substantial up-front outlay by ACS. For example, the company already has been compelled to make an unplanned purchase of costly software so that ACS may map census block contours onto its service territories, and match “unserved” and “served” customer locations to census blocks, as required by new FCC reporting requirements. This software will help ACS analyze what “unserved” locations remain in each census block, but that will not be enough. ACS also will need at least one new full-time network planner and a new full-time financial analyst to help ensure compliance with ACS’s CAF I build-out and reporting obligations and to help the company analyze whether it can accept CAF II support.<sup>28</sup> These added expenses are significant for a small company such as ACS.

The Commission allowed only 90 days for price cap carriers to decide whether to elect CAF Phase I incremental support, and a number of carriers accepted none, citing the inability to perform the necessary business analysis in that time. Other carriers such as ACS did accept incremental support but after further review were compelled to revise their estimates on what they reasonably could serve.<sup>29</sup> The same mistake should not be

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<sup>28</sup> See Letter to Marlene H. Dortch, Secretary, FCC, from Karen Brinkmann, Counsel to ACS, *Developing a Unified Intercarrier Compensation Regime, et al.*, CC Docket Nos 01-92 and 96-45, WC Docket Nos. 03-109, 05-337, 07-135 and 10-90, WT Docket No. 10-208, and GN Docket No. 09-51 (filed Nov. 19, 2012) and PowerPoint attachment “Alaska Communications CAF Frozen Support Obligations” (dated Nov. 15, 2012) at 3.

<sup>29</sup> See *Connect American Fund; Petition for Waiver of Section 54.312(b)(2) and (b)(3) of the Commission’s Rules of ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.*, Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (filed Sept. 26, 2012) (“ACS CAF Phase I Waiver Petition”); see also Letter to Marlene H. Dortch, Secretary, FCC, from Russell M. Blau, Counsel to Consolidated Communications, Inc. (filed Jan. 31, 2013) (“Consolidated Letter”). Following election of the \$421,247 in CAF I incremental support it was awarded,

repeated here. The Bureau should allow 180 days for carriers to consider all of the eligible census blocks, assess what locations are unserved and eligible for support, and determine the cost to meet the Commission's performance requirements. Only then will they be able to make an informed election under CAF Phase II.

**B. The Commission Should Allow Carriers To Elect CAF II Support On A Study Area Rather Than Statewide Basis**

ACS urges the Bureau to revisit the merits of requiring statewide election for carriers such as ACS that serve multiple study areas, with widely differing characteristics, in the same state.

The four ACS ILECs serve six study areas, five of them rural, all within Alaska. ACS sets local rates differently for different study areas, its costs vary widely among the different study areas, and its network architecture differs as well. Not surprisingly, levels of broadband availability and penetration also differ among ACS's study areas. Even if the four ACS ILECs are permitted each to make an independent CAF Phase II election, two of the four, ACS of Alaska and ACS of the Northland, would be forced to make a statewide election, each for two very different study areas. ACS of Alaska serves the

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Consolidated filed a letter with the Commission stating that it "was subsequently notified by the FCC that some of the proposed service areas listed in its capital improvement plans were identified as being currently served by other broadband providers, and thus Consolidated could not use the funding for broadband extension in those areas. After a careful review of these developments and after finding no other alternative use for the funds, the company has determined that it will no longer be economically feasible to accept and use the CAF I incremental support funds at this time and is returning all funds received to date to the FCC." Consolidated Letter at 1.

diverse Juneau study area and the very sparsely populated Greatland study area.<sup>30</sup> ACS of the Northland serves the Glacier State study area and the extremely remote communities of the Sitka study area.<sup>31</sup>

There is good cause to permit ACS of Alaska and ACS of the Northland to elect CAF Phase II support on a study area basis. Doing so would provide electing carriers added flexibility to accept support where they can make efficient use of the funding to maximize access to broadband capability. In contrast, a statewide acceptance requirement would likely discourage the ACS ILECs from accepting any support, though they serve areas where it could be put to beneficial use, because it could also require economically infeasible outlays of additional capital by the company disproportionate to the expected benefit.

Similarly, the Bureau should not require a carrier at the time it accepts Phase II support to certify as to the technology to be used or the exact locations to which broadband will be deployed.<sup>32</sup> These details will evolve as each carrier implements its

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<sup>30</sup> Within the ACS of Alaska operating company, the Juneau study area has 13,055 locations spread over 1,055 square miles, whereas the Greatland study area has 1,027 locations spread over 1,225 square miles.

<sup>31</sup> Within ACS of the Northland, only the Glacier State study area is connected by fiber to Anchorage; the 49 bush communities of the Sitka study area rely on satellite or terrestrial point-to-point microwave middle-mile connectivity. While some of these study areas are in census blocks that would qualify for the RAF instead of CAF Phase II support, a number of them are eligible for CAF II support under the Connect America Cost Model (“CACM”). ACS has demonstrated that the CACM fails to account for the transport costs associated with serving these areas, including undersea cable and terrestrial microwave costs, which would change the result for many census blocks served by the ACS ILECs. *See, e.g., Connect America Fund*, WC Docket No. 10-90, Comments of ACS filed July 9, 2012; Letter from Karen Brinkmann, Counsel for ACS, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90 and 05-337, filed Feb. 13, 2012.

<sup>32</sup> CAF II Public Notice, para. 25.

required deployment, and carriers should not be needlessly subjected to predictive reporting requirements that serve no purpose. Rather, the annual reporting obligations already in place should be sufficient to ensure that carriers use the support for its intended purpose.<sup>33</sup>

**C. Local Conditions Should Determine the Percentage of Locations Required To Be Served at 6 Mbps Downstream/1.5 Mbps Upstream**

The Commission has observed that broadband availability in Alaska lags behind that of other parts of the nation.<sup>34</sup> Moreover, the Commission has repeatedly noted that its CAF program should be tailored to reflect local conditions, especially in Alaska.<sup>35</sup> FCC

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<sup>33</sup> 47 C.F.R. §54.313.

<sup>34</sup> In the Commission's most recent broadband progress report, it cites that Alaska has the fourth highest percentage of overall population, at 19.6%, lacking access to broadband at the speed benchmark of 3 Mbps/768 kbps, and the second highest percentage of rural population, at 48.9%, lacking access to broadband at those speeds. These percentages are significant compared to the national average of 6% of the overall population lacking broadband access and the national average of 23.7% of the rural population lacking such access. Notably even in non-rural areas, these Alaska residents lack broadband access at more than twice the national average. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, 27 FCC Rcd 10342 at Appendix C (2012).

<sup>35</sup> *See USF-ICC Transformation Order*, paras. 193 and 508. Specifically, the Commission has stated that "it is important to ensure our approach is flexible enough to take into account the unique conditions in places like Alaska, and we make a number of important modifications to the national rules, particularly with respect to public interest obligations, the Mobility Funds, and competitive ETC phase down, to account for those special circumstances, such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season. Further, to the extent specific proposals have a disproportionate or inequitable impact on any carriers (wireline or wireless) serving Alaska, we note that we will provide for expedited treatment of any related waiver requests for all Tribal and insular areas." *Id.*, para. 508 (footnotes omitted).

rules require the Bureau to specify the percentage of total supported locations to which broadband should be made available at speeds of at least 6 Mbps downstream and 1.5 Mbps upstream.<sup>36</sup> ACS urges the Bureau to tailor this percentage to local conditions.

The Bureau should avoid setting a percentage for broadband availability at higher speeds than 4 Mbps/1 Mbps where it cannot reasonably be achieved. While the Bureau could set the percentage at a level that is reasonable for the state that lags behind the farthest, this will not serve the interests of consumers in states that already enjoy more advanced infrastructure. ACS therefore urges the Bureau to tailor this requirement to local conditions. This will ensure that carriers have a reasonable opportunity to meet the requirement while promoting the greatest possible consumer benefit from the CAF Phase II program nationwide.

**D. ETC Obligations Should Follow the CAF II Election**

When an ILEC elects CAF Phase II support for particular census blocks deemed eligible for support, it is expected to satisfy FCC performance requirements for voice and broadband within those census blocks.<sup>37</sup> However, the Commission does not relieve the ILEC's preexisting obligations under state and federal support to continue to provide, at a minimum, basic telecommunications transmission services in areas not eligible for CAF (either because they are deemed below the cost threshold, or because they are deemed extremely high-cost and thus eligible for RAF). Similarly, if an ILEC declines to elect

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<sup>36</sup> 47 C.F.R. §54.313(e)(2).

<sup>37</sup> See 47 C.F.R. §54.313(e) (listing requirements for recipients of CAF Phase II support). See also 47 C.F.R. §54.7(a) (carrier receiving support shall use it only for the provision, maintenance and upgrade of facilities and services for which the support is intended), §54.202(a)(1) (to be designated as eligible telecommunications carrier ("ETC"), carrier must certify that it will comply with the service requirements applicable to the support it receives).

CAF Phase II support, and it is auctioned to one or more other carriers, it is not clear that the ILEC will be relieved of its obligations to provide telecommunications services on regulated terms. Under current law, ILECs remain obligated to provide voice and other previously supported services throughout their study areas even where support is given to another carrier or redirected to census blocks deemed unserved by broadband.<sup>38</sup>

ACS submits that the disjoinder of ETC obligations and federal high-cost support makes no economic or policy sense. Obligations traditionally associated with ETCs under the Communications Act and parallel state requirements should not remain in place where the Commission is withdrawing high-cost support. Because the inter-carrier compensation rules no longer permitting ILEC recovery of the costs associated with providing public switched telecommunications services except from their own end-users, withdrawal of high-cost support will necessarily cause end-user rates to increase, in most cases to unaffordable levels. The Commission has declined to require states to make up the difference through state-funded support mechanisms. Therefore, the obligation to continue providing services must be relieved in previously supported census blocks where CAF II is unavailable. To the extent that those census blocks become supported through an alternative mechanism, such as the RAF, the recipient of that support should take up the ETC obligations prescribed by the Commission for that level of support.<sup>39</sup>

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<sup>38</sup> *E.g.*, *USF-ICC Transformation Order*, para. 19 (reminding carriers of their continuing obligation to provide voice service); *id.*, para. 82 (declining to preempt state COLR obligations).

<sup>39</sup> *See Connect America Fund*, WC Docket No. 10-90, Comments of Alaska Communications Systems (filed Feb. 19, 2013) (“ACS RAF Comments”).

### **III. CONCLUSION**

For the foregoing reasons, the census block eligibility criteria for CAF Phase II should not exclude areas from support in the absence of clear and convincing evidence that they are adequately served with voice and broadband capability. The Bureau should design the challenge process to default in favor of eligibility, and encourage use of support for broadband expansion, not to exclude census blocks based on unsubstantiated claims of competitive services. Moreover, the rules for electing CAF Phase II support should be designed to facilitate acceptance by price cap ILECs, who have both the embedded infrastructure and knowledge of local conditions and the current obligations to provide sufficient service as Carriers of Last Resort. With the suggestions noted herein, the Bureau can promote rather than discourage further broadband investment in high-cost areas.

Respectfully submitted,



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